

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

## BRANCH BANKING AND TRUST COMPANY,

Case No. 2:12-CV-1462 JCM (VCF)

## ORDER

Plaintiff(s),

V.

PAHRUMP 194, LLC, et al.,

Defendant(s).

Presently before the court is plaintiff Branch Banking and Trust Company's motion for attorneys' fees and nontaxable costs. (ECF No. 122). Defendants have filed a response (ECF No. 126), and plaintiff has filed a reply (ECF No. 133).

## I. Introduction

On August 17, 2016, plaintiff filed a complaint against defendants in relation to a deed of trust and corresponding guarantee agreement, alleging claims for deficiency, breach of guarantee, and breach of the covenant of good faith and fair dealing. (ECF No. 1). On July 5, 2016, this court entered judgment in favor of the plaintiff in the amount of \$17,959,003.07. (ECF Nos. 120–21). Plaintiff now requests attorneys' fees and nontaxable costs in the amount of \$169,647.95 and \$19,724.79, respectively. (ECF No. 133) (adjusting relief requested); *see also* (ECF No. 122).

## **II. Legal Standard**

Federal Rule of Civil Procedure 54(d)(2) allows a party to file a motion for attorneys' fees if it: (1) is filed within 14 days after judgment is entered; (2) identifies the legal basis for the award; and (3) indicates the amount requested or an estimate thereof. Moreover, “[a] federal court sitting in diversity applies the law of the forum state regarding an award of attorneys’ fees.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000). A Nevada trial court “may

1 not award attorney fees absent authority under a statute, rule, or contract.” *Albios v. Horizon*  
 2 *Communities, Inc.*, 132 P.3d 1022, 1028 (Nev. 2006).

3 In *Brunzell*, the Nevada Supreme Court articulated four factors for a court to apply when  
 4 assessing requests for attorneys’ fees:

5 (1) the qualities of the advocate: his ability, his training, education, experience,  
 6 professional standing and skill; (2) the character of the work to be done: its difficulty,  
 7 its intricacy, its importance, time and skill required, the responsibility imposed and  
 8 the prominence and character of the parties where they affect the importance of the  
 litigation; (3) the work actually performed by the lawyer: the skill, time and attention  
 given to the work; (4) the result: whether the attorney was successful and what  
 benefits were derived.

9 455 P.2d at 33. The trial court may exercise its discretion when determining the value of  
 10 legal services in a case. *Id.* at 33–34.

11 Additionally, a trial court applying Nevada law must utilize *Bruzell* to assess the merits of  
 12 a request for attorneys’ fees, yet that court is not required to make findings on each factor. *Logan*  
 13 *v. Abe*, 350 P.3d 1139, 1143 (Nev. 2015). “Instead, the district court need only demonstrate that  
 14 it considered the required factors, and the award must be supported by substantial evidence.” *Id.*  
 15 (citing *Uniroyal Goodrich Tire Co. v. Mercer*, 890 P.2d 785, 789 (Nev. 1995), superseded by  
 16 statute on other grounds as discussed in *RTTC Commc’ns, LLC v. Saratoga Flier, Inc.*, 110 P.3d  
 17 24, 29 n.20 (Nev. 2005)).

18 The Local Rules for the United States District Court, District of Nevada, impose further  
 19 procedural requirements on motions for attorneys’ fees and costs.<sup>1</sup> See LR 54-1, 54-14. To obtain  
 20 costs other than attorneys’ fees, “[a] prevailing party who claims costs must file and serve a bill of  
 21 costs and disbursements on the form provided by the clerk no later than 14 days after the date of

22 <sup>1</sup> Local Rule 54-14(b)(3) specifically identifies the required information for a trial court in  
 23 this district to consider a motion for attorneys’ fees. These thirteen items are as follows:

24 (A) The results obtained and the amount involved; (B) The time and labor  
 25 required; (C) The novelty and difficulty of the questions involved; (D) The skill  
 26 requisite to perform the legal service properly; (E) The preclusion of other  
 27 employment by the attorney due to acceptance of the case; (F) The customary fee;  
 28 (G) Whether the fee is fixed or contingent; (H) The time limitations imposed by the  
 client or the circumstances; (I) The experience, reputation, and ability of the  
 attorney(s); (J) The undesirability of the case, if any; (K) The nature and length of  
 the professional relationship with the client; (L) Awards in similar cases; and (M)  
 Any other information the court may request.

LR 54-14(b)(3).

1 entry of the judgment or decree.” LR 54-1(a). Additionally, that bill of costs must be accompanied  
 2 “by an affidavit [that] distinctly set[s] forth each item so that its nature can be readily understood.  
 3 An itemization and, where available, documentation of requested costs in all categories must be  
 4 attached to the bill of costs.” LR 54-1(b).

### 5 **III. Discussion**

#### 6 *a. Attorneys' fees*

7 Defendants argue for the mitigation of any award of attorneys’ fees because of work caused  
 8 by plaintiff’s actions in the case, alleged duplication of labor between this case and another, and  
 9 other reasons idiosyncratic to specific fee entries. *See* (ECF No. 126, 126-5). However, the court  
 10 need not reach these issues because information fundamental to its decision is presently  
 11 unavailable. *See* LR 54-14(b)(3).

12 This court has previously held that the potential to “easily glean the information” from a  
 13 motion for attorneys’ fees is insufficient to satisfy Local Rule 54-14(b)’s “brief summary”  
 14 requirement. *Anderson v. White*, No. 2:13-CV-2097-JCM-VCF, 2016 WL 3396932, at \*2 (D.  
 15 Nev. June 14, 2016); *see also Lerner v. O’Connor*, No. 2:14-CV-341-JCM-VCF, 2015 WL  
 16 789665, at \*3–4 (D. Nev. Feb. 25, 2015) (finding partial discussion of then-labeled LR 54-16(b)  
 17 insufficient to grant motion for attorneys’ fees).

18 In this case, plaintiff has failed to satisfy Local Rule 54-14(b)(3) because plaintiff’s request  
 19 for attorneys’ fees insufficiently discusses the “[t]he customary fee” and “[a]wards in similar  
 20 cases” prongs of that rule. LR 54-14(b)(3)(F), (L). To enforce the terms of the underlying  
 21 agreements in this case, this court requires additional information under Local Rule 54-14(b)(3) to  
 22 determine what constitutes “reasonable attorneys’ fees,” pursuant to those contracts. (ECF Nos.  
 23 28-2 at 4, 28-3 at 5); *see also Branch Banking and Trust Company v. Jones/Windmill, LLC, et al.*,  
 24 2:12-cv-452-JCM-GWF (D. Nev. Feb. 7, 2017) (discussing this court’s obligation to scrutinize  
 25 requests for attorneys’ fees).

#### 26 *b. Nontaxable costs*

27 “Federal Rule of Civil Procedure 54(d)(1) establishes that costs are to be awarded as a  
 28 matter of course in the ordinary case.” *Ass’n of Mexican-Am. Educators v. State of California*,  
 231 F.3d 572, 593 (9th Cir. 2000); *see also* Local Rule 54-1 (“Unless the court orders otherwise,

1 the prevailing party is entitled to reasonable costs.”). Moreover, a bill of costs must be itemized.  
2 LR 54-1(b).

3 Defendants’ opposition to plaintiff’s request for nontaxable costs is defeated by the  
4 applicable contract language in this case. *See* (ECF Nos. 28-2 at 4, 28-3 at 5) (discussing the  
5 payment of “all” expenses—separate from attorneys’ fees—incurred in an action to enforce the  
6 agreements). This court will respect these contact terms and therefore declines to apply Local  
7 Rule 54-11 or similar restrictions on the award of nontaxable costs.

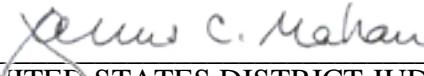
8 **IV. Conclusion**

9 Ultimately, plaintiff’s request for attorneys’ fees is denied in its present form. Should  
10 plaintiff refile its motion for attorneys’ fees, it shall produce the information discussed in Local  
11 Rule 54-14 in a manner constructive to the court’s analysis. Moreover, plaintiff’s request for  
12 nontaxable costs will be granted.

13 Accordingly,

14 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the present motion for  
15 attorneys’ fees and nontaxable costs (ECF No. 122) be, and the same hereby is, GRANTED IN  
16 PART AND DENIED IN PART, consistent with the foregoing.

17 DATED February 9, 2017.

18   
19 UNITED STATES DISTRICT JUDGE